

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 7514 of 2005

Between:

P. Ramesh, S/o. P. Shankaraiah,
R/o. 9-1-1/166, Bapunagar, Langar House, Golkonda, Hyderabad.

... PETITIONER

AND

- 1 The DDMS, HQ ATNNK & Area (Med), Island Ground, Chennai - 600 009.
- 2 The Officer Commanding, Office of the Station Health Organization, Langar House, Golkonda, Hyderabad.
- 3 The Officer Commanding, Military Hospital, Golkonda, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly, one in the nature of Writ of Mandamus by directing the 2nd respondent to issue orders appointing the Writ Petitioner to the post of Chowkidar in grade of Rs. 2550-3200 for which, the Writ Petitioner was already selected as per the admission of the respondents themselves dated 15-5-2004 by setting aside the same holding the same as unsustainable.

Counsel for the Petitioner: MR.J.SUDHEER

**Counsel for the Respondents: MR.A.RAJASHEKAR REDDY
(ASST.SOLICITOR GEN.)**

The Court at the admission stage made the following:

ORAL ORDER:- (Per GB,J.)

The Writ Petition is filed assailing the order, dated 07.01.2005, passed by the Central Administrative Tribunal, Hyderabad Bench in O.A.No.1044 of 2004.

2. The matter relates to appointment to the post of Chowkidar. In pursuance of earlier notification, dated 27.04.2004, the petitioner and others applied for the post of Chowkidar. The petitioner also applied for the post of Mazdoor. However it is also on record that the petitioner was selected as first in the merit list of Chowkidar and also as first reserve in the category of Mazdoor. But, however, the higher authorities having found that certain irregularities have been taken place, cancelled the notification. Thereafter, as per the orders of the Headquarters, the respondents issued second notification, dated 15.08.2004, for the same posts, for which, the petitioner made an application and he was subjected to interview for the post of Chowkidar and was figured at Sl.No.3 in the merit list, and thus he was not selected in the interviews conducted in pursuance of the 2nd notification. Aggrieved by the inaction of the respondents in not finalizing the selection in pursuance of advertisement dated 27.4.2004, the petitioner approached the Tribunal seeking direction to the respondents to appoint him as Chowkidar in pursuance of the earlier notification.

3. The Tribunal, after considering the matter, held that the petitioner is not entitled for any relief as sought for, and accordingly dismissed the O.A., against which the present Writ Petition has been filed.

4. The learned counsel for the petitioner submits that the ground of cancellation of the first notification is illegal and contrary to law. He submits that the only ground on which the notification was cancelled is that his father was working in the same

department, and such a ground cannot be relied on to deny the employment, and therefore, the order of the Tribunal is illegal and contrary to law.

5. We have heard the learned counsel for the petitioner and also the learned standing counsel for the Central Government.

6. We have also perused the selection proceedings. It is clearly noted that earlier notification, dated 27.04.2004, was cancelled on the directions of the higher authorities and second notification, dated 15.08.2004, was issued in which the petitioner also participated, but however, he did not come up in the merit list. The Tribunal having observed that the petitioner participated in the later selection, he cannot approbate or reprobate, dismissed the O.A. The following are the observations of the Tribunal:

“Having heard the learned counsel on either side and having gone through the documents produced before this Tribunal, we find that the respondent-authorities cancelled the postings due to certain complaints made in the matter about the selection of the candidates, and the irregularities pointed out earlier in the judgment. As per the orders of the Headquarters, they again re-notified the post, changed the Selection Board and gave the responsibility to the Commanding Officer of Military Hospital, Golconda, so that no informal or formal influence could be visited in the selection. The applicant herein has also applied for the re-notified post and thus has become a party to the process of selection for the second time. As per the repeated Hon’ble Supreme Court Judgments one cannot participate in the selection process as also challenge and reject the same. Any applicant, who has applied for the post, as per the notification and is participating in the selection process as per the repeated Court Judgments is barred from nullifying and challenging the same. In view of the above judgments and in view of the fact that the applicant has once again applied for the post as per the fresh notification, he is estopped from making a complaint in the matter. He is not entitled to pray for cancellation of the notification to which he has already responded as a candidate, whose candidature would be considered by the respondent-authorities on merits.”

7. Though the learned counsel for the petitioner submits that the reasons given in the cancellation of notification are absolutely unsustainable inasmuch as even in the

present selection also, the sons of the serving employees are selected. Therefore, the order is not sustainable.

8. We are afraid we cannot accept the contention raised by the learned counsel.

9. Learned counsel for the petitioner relies on the decision of the Supreme Court reported in ***MUNNY ROY v UNION OF INDIA & OTHERS***, but the same is not appropriate in this case inasmuch as the entire selection was cancelled and a fresh selection was made. In the second process, only one person who was selected in the earlier selection, again selected in the second selection, but the second person, who selected in the second selection was not selected in the first selection, and therefore, we also cannot attribute any motive to the selection process.

10. In the instant case, the petitioner cannot be said to be prejudiced inasmuch as the entire selection was cancelled and fresh notification was made and fresh selections were made for the second time. Under those circumstances, we do not find any flaw in the order passed by the Tribunal.

11. Accordingly, the Writ Petition is dismissed. No costs.

G.BIKSHAPATHY, J

DATE: 19.04.2005

P.S.NARAYANA, J

To

- 1 The DDMS, HQ ATNNK & Area (Med), Island Ground, Chennai - 600 009.
- 2 The Officer Commanding, Office of the Station Health Organization, Langar House, Golkonda, Hyderabad.
- 3 The Officer Commanding, Military Hospital, Golkonda, Hyderabad.
- 4 Two C.D. Copies.
- 5 The Registrar, Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 7514 of 2005

(per GB,J)

Date: 19-04-2005

Es/Kvrm